IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 102 of 2002

WITH

OFFICIAL LIQUIDATOR REPORT No. 43 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHILPA TRADERS - Petitioner(s)
Versus
ROHINI FABRICATORS LTD. - Respondent(s)

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Appearance :
MR JOY MATHEW for Petitioner No(s).: 1.
MR DP KINARIWALA for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 11/07/2005

COMMON ORAL JUDGMENT

1. The petitioner, namely, M/s. Shilpa Traders has filed this petition under Section 433 read with Section 434 of the Companies Act, 1956 for winding up of the respondent Company on the ground that the respondent Company has failed to make the payment of Rs.1,05,392/- along with interest @ 24% p.a.

2. This Court has issued notice on 09.05.2002. Mr. D.P. Kinariwala, learned advocate has filed his appearance on behalf of the respondent Company. On 21.02.2003, this Court has passed an order recording the statement of Shri Joy Mathew, learned advocate appearing for the petitioner to the effect that the respondent Company had not given reply to the statutory notice. Even after issuance of notice to the respondent Company, no

reply has been filed. Mr. Savani, learned advocate appearing for the respondent Company was not in a position to dispute the said fact. The Court, therefore, deemed it fit and proper to admit the present petition. However, order of advertisement was deferred.

3. The present petitioner thereafter filed Company Application No. 423 of 2003 in Company Petition No. 102 of 2002. While disposing of the said application on 26.08.2003, this Court has observed that considering the approach of the respondent Company, the prayer for publication of advertisement was granted and advertisement as to the admission of the winding up petition and final hearing was ordered to be published in two daily Newspapers of Ahmedabad edition, namely, “Sambhav” Gujarati daily and “Asian Age” English daily on or before 12.09.2003 indicating the date of final hearing as 30.09.2003. Publication of advertisement in the Government Gazette was

dispensed with.

4. Pursuant to the said order, the petitioner has published the advertisement as directed by this Court on 12.09.2003 and necessary newspaper cuttings were also produced on record.

5. The present petitioner thereafter moved Company Application No. 593 of 2003 in Company Petition No. 102 of 2002. While disposing of the said application on 28.01.2004, this Court has observed that in light of the fact that nearly one year has gone by since the petition was admitted and there was no response from the respondent Company even after publication of advertisement which had been ordered on 26.08.2003, it was necessary to grant the prayer made in Company Application No. 593 of 2003. Accordingly, the Official Liquidator attached to this Court was appointed as the Provisional Liquidator for managing the movable and immovable properties of the respondent Company

till the order of winding up was made. The Official Liquidator was further directed to carry out inventory of all assets, both movable and immovable of the respondent Company and was further directed to place on record the details thereof.

6. Since petition was admitted and advertised long back and the Official Liquidator was also appointed as the Provisional Liquidator of the respondent Company and the assets of the Company were put on sale, the Company is not likely to revive and there is no possibility that the Company would be in a position to restart its business activities. Even otherwise, the appointment of the Provisional Liquidator was not challenged by the Company at any stage and it appears that the management of the Company has lost all its interest in running of the said Company. The respondent Company has totally failed to discharge its financial obligations

towards its Creditors and the financial substratum of the Company has gone down.

7. In the above view of the matter, the Court is of the view that it is not in the interest of the Creditors and members of the Company or even in public interest to allow such Company to carry out its business activities and it is just and proper to pass the order of winding up. Accordingly, the respondent Company is hereby ordered to be wound up. The Official Liquidator who is working as the Provisional Liquidator will now work as the Liquidator of the Company and since he has already constituted the Sale Committee and put the properties of the Company on sale, the report of the Official Liquidator for confirmation of the sale is simultaneously considered by this Court.

8. Company Petition No. 102 of 2002 is accordingly disposed of without any order as to costs

9. Pursuant to the order dated 28.01.2004 passed in Company Application No. 593 of 2003, the Official Liquidator working as Provisional Liquidator of the respondent Company has taken over the charge of the assets of the respondent Company and constituted the Sale Committee and advertisement was given in the Newspaper for sale of the assets of the Company. Based on the decision of the Sale Committee, the Official Liquidator has filed O.L.R. No. 43 of 2005 seeking following directions from this Court :-

A)Whether this Hon'ble High Court be pleased to consider the offer of M/s. Ekta Enterprise, Ahmedabad for Rs. 10 Lacs for said assets (except record and T.K. Office) as considered by Sale Committee on the same terms and conditions more particularly described as per the terms and conditions of Tender and minutes for confirmation or otherwise;

B)Whether this Hon'ble Court be pleased to ratify the action taken by Official Liquidator to pay the bill of M/s. Navnitlal & Co., of Rs. 12,515/- being advertisement charges from funds available with company accounts.

10. The Official Liquidator has submitted in his report that by order dated 21.07.2004 in O.L.R. No. 21/2001, this Court has directed the Official Liquidator to sell the property through the Sale Committee consisting of Official Liquidator and representative of all the respondents. Accordingly, the Official Liquidator has called the meeting of the Sale Committee on 18.11.2004 for taking further course of action to sell the assets of the Company. The advertisements were also issued in the Newspapers i.e. 'Divya Bhaskar' and 'Economic Times' on 22.11.2004. Pursuant to the said advertisement, five parties have taken inspection, but no offer was received. Thereafter, two offers were brought by the Secured Creditor,

namely, Oriental Bank of Commerce and they are (1) Mr. Kamlesh G. Patel for Rs. 7 Lacs and (2) M/s. Ekta Enterprise for Rs. 8 Lacs. The Official Liquidator has thereafter convened the meeting of the Sale Committee on 10.02.2005 to sale the assets and properties of the Company. The inter-se bidding was started amongst the two bidders and M/s. Ekta Enterprise has revised its offer from Rs. 8 Lacs to Rs. 10 Lacs and accordingly, the Sale Committee has decided to sell the property subject to confirmation of this Court in favour of M/s. Ekta Enterprise for Rs. 10 Lacs. Thereafter, the present report is filed by the Official Liquidator.

11. This Court has issued notice on 28.06.2005 directing the Official Liquidator to intimate to the bidders who have participated in the bid before the Sale Committee and also the intending purchasers who want to participate in the inter-se bidding in the Court. Pursuant to the said

notice, two parties who have participated before the Sale Committee remained present before this Court today. Mr. Kamlesh G. Patel has expressed his inability to participate further in the bid and hence, the offer made by M/s. Ekta Enterprise for Rs. 10 Lacs is the only offer before this Court. The Court is of the view that this is not an adequate offer and persuaded the said party to raise its bid. Mr. Sunit S. Shah, learned advocate appearing for the Oriental Bank of Commerce has also persuaded the said party to increase its offer and accordingly, the offer was raised to Rs. 11 Lacs. Since there is no other offer and offer made by the said bidder is more than the value determined by the Valuer, the same is accepted on the following terms and conditions :-

1) The sale is on **“AS IS WHERE IS WHATEVER THERE IS BASIS”**.

2)The intending purchaser has to make full payment within one month from today.

3)The shifting of records will be at the cost of the purchaser.

4)The possession will be given after realization of full sale consideration.

5)All other expenses including registration of documents registration fees, all other dues and Cess of AMC and AEC/GEB etc. which are due and payable as on date of consideration will be borne by the purchaser.

6)In the event, the purchaser fail to pay full sale consideration, the EMD of purchaser will be liable to be forfeited and in the event of second sale, the purchaser will be liable to pay the short fall arising on second sale.

12. The action of the Official Liquidator in making the payment to M/s. Navnitlal & Co., of Rs. 12,515/- being advertisement charges from the funds available with company accounts is hereby ratified.

13. The Official Liquidator is directed to deposit the amount of sale consideration with the Oriental Bank of Commerce.

14. This report is accordingly disposed of.

[K.A. PUJ, J.]

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